IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 481 of 2001
With
CRIMINAL APPEAL No. 482 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI ZAVERBHAI SENVA - Appellant(s)

Versus

STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR BS SUPEHIA for Appellant(s) : 1,
MR KT DAVE, APP for Opponent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 09/12/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Abovenumbered two Appeals filed under Section 374(2) of the Code of Criminal Procedure, 1973 are directed against judgment dated March 20, 2001 rendered by the learned 3rd Joint District Judge and Additional Sessions Judge Camp at Anand in Special Case No. (SC/ST) 14/2000 by which the appellant in each appeal is convicted for commission of offences punishable under Sections 304 Part-II read with Section 114 IPC as well as Section 135 of the Bombay Police Act and the appellant in Criminal Appeal No.481/2001 is sentenced to RI for 7 years and fine of Rs.1,000=00; in default SI for 3 months for commission of offence punishable under Section 304 Part-II read with Section 114 IPC whereas, the appellant in Criminal Appeal No.482/2001 is sentenced to RI for 10 years and fine of Rs.1,000=00; in default SI for 3 months for commission of offence punishable under Section 304 Part-II read with Section 114 IPC. It may be mentioned that no punishment has been imposed by the learned Judge on the appellants for commission of offence punishable under Section 135 of the Bombay Police Act. As both the Appeals are directed against common judgment dated March 20, 2001 delivered in Special Case No. (SC/ST) 14/2000, this Court proposes to dispose of them by this common judgment.

The facts emerging from the record of the case are as under :-

Complainant Jenabhai Raijibhai Senva is resident of village Nanaadra Ta: Thasra. Name of his younger brother is Dahyabhai who is residing at village Sevavas. Dahyabhai had two sons named Dilipbhai and Chimanbhai. As Jenabhai Senva has no issue, he was dining at the house of his brother Dahyabhai. The incident in question took place on December 25, 1999. At about 9:00 a.m. in the morning Jenabhai had gone to the house of his brother Dahyabhai and was sitting on a cot which was placed in the Osri of the house. At that time Ms.Manjulaben who is wife of Dahyabhai and, Chimanbhai who was son of Dahyabhai were present. At about 1:15 p.m. Babubhai Zaverbhai i.e. the appellant in Criminal Appeal No.481/2001 who is residing opposite the house of Dahyabhai unleashed his goat. Therefore, Chimanbhai who was son of Dahyabhai asked Babubhai to tie the goat as it was likely to cause hurt to passersby. Babubhai refused to accede to the request of Chimanbhai saying that no hurt was caused to him by his goat. Thereupon, a scuffle took place between Babubhai and Chimanbhai. At that time the appellant in Criminal Appeal No.482/2001 who was residing in the house of Babubhai since a month, came at

the place of incident. According to the prosecution, Babubhai caught hold of the deceased whereas Lalitkumar i.e. the appellant in Criminal Appeal No.482/2001 gave a knife blow on abdomen of Chimanbhai. On receipt of knife blow Chimanbhai fell down. As hue and cry had taken place complainant Jenabhai Raijibhai who was in house of Dahyabhai came out along with Manjulaben wife of Dahyabhai. The appellant in Criminal Appeal No.482/2001 made an attempt to flee but that was thwarted by Budabhai. He was apprehended by Budabhai and others near Vankarvas of the village. Meanwhile, policemen also arrived at the place of incident and arrested the appellant in Criminal Appeal No.482/2001. Regarding the incident in question Jenabhai Raijibhai Senva lodged his complaint with PSI Mr.Shaikh MohammadIqbal Habib of Satellite Police Station. On the basis of the complaint lodged by Jenabhai offences were registered against the appellant in Criminal Appeal No.482/2001. During the course of investigation the appellant in Criminal Appeal No.481/2001 was also arrested. While in police custody the appellant in Criminal Appeal No.482/2001 made disclosure statement pursuant to which knife used by him in commission of crime was recovered. The Investigating Officer drew panchnama of place of incident in presence of panch witnesses. Before that he held inquest on the

dead body of the deceased and sent the same to hospital for post-mortem examination. The incriminating articles seized during the course of investigation were sent to Forensic Science Laboratory for analysis. On completion of investigation the appellant in each Appeal was charge-sheeted in the Court of learned Judicial Magistrate, First Class, Dakor for commission of murder of the deceased. As the offence punishable under Section 302 IPC is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Kheda at Nadiad for trial where it was numbered as Special Case No. (SC/ST) 14/2000.

The learned Additional Sessions Judge to whom the case was made over for trial framed necessary charge against the appellants at Exh.4. It was read over and explained to them. They pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Dr.Thakarsibhai Karshanbhai Vaghela as PW1 at Exh.10, (2) eye witness and complainant Jenabhai Raijibhai Senva as PW2 at Exh.13, (3) eye witness Budabhai Somabhai Senva as PW3 at Exh.15, (4) panch witness Babubhai Nathabhai Mayavanshi as PW4 at Exh.16, (5) Police Constable Bhailalbhai Hirabhai as PW5 at Exh.21, (6) Police Sub-Inspector Shaikh Mohammad Iqbal

Habib as PW6 at Exh.24 and (7) Investigating Officer Girishkumar Laxmankumar Singal as PW7 at Exh.28, to prove its case against the appellants. The prosecution also produced documentary evidence such as post-mortem notes of deceased Chimanbhai Senva at Exh.12, complaint lodged by Jenabhai at Exh.14, panchnama indicating recovery of knife pursuant to the statement made by the appellant in Criminal Appeal No.482/2001 at Exh.17, panchnama of place of incident at Exh.18, inquest report at Exh.19, panchnama indicating seizure of pant put on by the deceased at Exh.20, report of analysis of Forensic Science Laboratory at Exh.33, certificate issued by the Doctor after medically examining the appellant in Criminal Appeal No.482/2001 at Exh.38, complaint lodged by the appellant in Criminal Appeal No.482/2001 at Exh.43, etc. in support of its case against the accused.

After recording of evidence of prosecution witnesses was over, the learned Judge of the trial Court explained to the appellants the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure, 1973. In further statement each appellant claimed that he was innocent. However, no evidence was led by any of them in support of

the defence pleaded in the further statement.

On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution that the deceased died a homicidal death. The learned Judge further held that it was proved by the prosecution that the deceased had unleashed his goat and a quarrel had taken place between him and the appellant in Criminal Appeal No.481/2001 as a result of which the said appellant had caught hold of the deceased whereas the appellant in Criminal Appeal No.482/2001 had inflicted knife blow to the deceased Chimanbhai and caused his death. The learned Judge noticed that having regard to the circumstances in which the incident had taken place, offence punishable under Section 302 IPC was not made out but each appellant was liable to be convicted for commission of offence punishable under Section 304 Part-II read with Section 114 IPC and Section 135 of the Bombay Police Act. In view of abovereferredto conclusions the learned Judge has convicted appellant in each Appeal for commission of offence punishable under Section 304 Part-II IPC read with Section 114 IPC as well as Section 135 of the Bombay Police Act and imposed sentences referred to earlier by judgment dated March 20, 2001, giving rise to abovenumbered two Appeals.

This Court has heard Mr.B.S.Supehia, learned counsel of the appellants and Mr.K.T.Dave, learned APP for the State at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

The fact that the deceased Chimanbhai died a homicidal death is not disputed before this Court by the learned counsel of the appellants. The said fact stands amply proved by the testimony of the complainant Jenabhai as well as Dr.Thakarsibhai Vaghela who had performed autopsy on the dead body of the deceased. The injuries sustained by the deceased are enumerated in detail by Dr.Thakarsibhai Vaghela in his substantive evidence before the Court. They are also mentioned in post-mortem notes produced by the prosecution at Exh.12. According to the Doctor who had performed post-mortem on the dead body of the deceased, the cause of death of the deceased was cardiac arrest due to haemorrhagic shock as vital vessels were punctured by stabbing. In view of reliable evidence led by the prosecution there is no manner of doubt that the deceased Chimanbhai died a homicidal death. It is

nobody's case that the deceased had sustained injuries noticed by Dr.Vaghela in an accident or that those injuries were self inflicted. Therefore, the finding that it is proved by the prosecution that the deceased died a homicidal death being eminently just is hereby upheld.

The case of the prosecution is that a scuffle had taken place between the deceased and the appellant in Criminal Appeal No.481/2001 during which the said appellant had caught hold of the deceased and the appellant in Criminal Appeal No.482/2001 had inflicted knife blow. However, on reappreciation of evidence of eye witness Jenabhai Senva recorded at Exh.13, this Court finds that it is not stated by him that when the appellant in Criminal Appeal No.481/2001 had caught hold of the deceased, a knife blow was given to the deceased by appellant in Criminal Appeal No.482/2001. What is mentioned by eye witness Jenabhai is that as the goat was unleashed the deceased had asked the appellant in Criminal Appeal No.481/2001 to tie the goat as a result of which a scuffle had taken place and the said appellant had caught hold of the deceased. What is mentioned by this witness is that when the scuffle was going on the appellant in Criminal Appeal No.482/2001 had, all of a sudden, came to the place of incident and inflicted knife

blow on abdomen of the deceased. The witness has not stated that at the time when knife blow was given to the deceased by the appellant in Criminal Appeal No.482/2001, he was caught hold of by the appellant in Criminal Appeal No.481/2001 to facilitate giving of blow by the appellant in Criminal Appeal No.482/2001. Similarly, another eye witness Budabhai Somabhai Senva has also not stated that the deceased was caught hold of by the appellant in Criminal Appeal No.481/2001 when knife blow was given to the deceased by the appellant in Criminal Appeal No.482/2001. On review of evidence adduced by the prosecution this Court is of the opinion that it is not satisfactorily established by the prosecution that the deceased was caught hold of by the appellant in Criminal Appeal No.481/2001 when knife blow was given to him by appellant in Criminal Appeal No.482/2001. The only fact established by the prosecution is that a scuffle had ensued between the deceased and the appellant in Criminal Appeal No.481/2001. It is also relevant to notice that the Forensic Science Laboratory's report does not indicate that the clothes put on by the appellant in Criminal Appeal No.481/2001 were stained with blood having the same group as that of the deceased. If the deceased had been caught hold of by the appellant in Criminal Appeal No.481/2001 when knife blow was given by

the appellant in Criminal Appeal No.482/2001, his clothes would have been stained with blood having the same group as that of the deceased. On review of evidence on record this Court finds that it is not satisfactorily established by the prosecution that the appellant in Criminal Appeal No.481/2001 had abetted commission of crime by the appellant in Criminal Appeal No.482/2001 and he will have to be acquitted of the offence punishable under Section 304 Part-II read with Section 114 IPC by giving reasonable benefit of doubt arising from the facts of the case.

As far as conviction of the appellant in Criminal Appeal No.482/2001 is concerned, this Court finds that his conviction is well-founded and no case is made out by the learned counsel of the appellants to interfere with the same. The fact that the said appellant inflicted knife blow to the deceased stands amply proved by reliable testimony of witness Jenabhai who had witnessed the whole incident. Though witness Jenabhai is cross-examined at length and in detail, nothing could be brought on record to impeach his creditability. No major omissions and/or contradictions could be brought on record by the defence so as to impeach his creditability. Eye witness Jenabhai stands completely corroborated by

medical evidence on record tendered by Dr.Vaghela as well as evidence tendered by another eye witness Budabhai Senva who had, in fact, apprehended the appellant in Criminal Appeal No.482/2001 when an attempt was made by him to flee after inflicting knife blow on the deceased. It is not even remotely suggested to any of the eye witnesses that he was on inimical terms with any of the appellants in Criminal Appeal No.482/2001. Therefore, false implication of the said appellant stands completely ruled out. The record does not show that there was any previous enmity between the appellant in Criminal Appeal No.482/2001 and the deceased, nor does it indicate that any undue advantage of the situation was taken by the said appellant. Therefore, this Court finds that conviction of the appellant in Criminal Appeal No.482/2001 under Section 304 Part-II IPC is well-founded. The same is hereby upheld.

The question which arises for consideration of the Court is, whether punishment imposed on appellant in Criminal Appeal No.482/2001 for commission of offence punishable under Section 304 Part-II IPC is harsh and whether any case is made out by the learned counsel of the appellants for reduction of the same. While considering this question, this Court finds that there

was no previous enmity between appellant in Criminal Appeal No.482/2001 and the deceased. In fact, the said appellant was guest of original accused No.2. He had not taken any undue advantage of the situation in the sense that he had not inflicted any further injury to the deceased. Therefore, this Court is of the opinion that the learned Judge was not justified in imposing maximum punishment provided by the law while convicting the said appellant for commission of offence punishable under Section 304 Part-II IPC. The jail remarks sheet of appellant in Criminal Appeal No.482/2001 produced by the learned APP for the State for perusal of the Court indicates that by this time the said appellant has undergone sentence of 7 years and 6 months with remissions. On the facts and in the circumstances of the case, this Court is of the opinion that interest of justice would be served if the appellant in Criminal Appeal No.482/2001 is punished to sentence for RI for 7 years and 6 months for commission of offence punishable under Section 304 Part-II IPC.

For the foregoing reasons, Criminal Appeal No.481/2001 is allowed. The appellant in the said Appeal is given benefit of doubt. Judgment dated March 20, 2001 rendered by the learned 3rd Joint District Judge and

Additional Sessions Judge Camp at Anand in Special Case No. (SC/ST) 14/2000 convicting him for commission of offences punishable under Section 304 Part-II IPC read with Section 114 IPC as well as Section 135 of the Bombay Police Act and imposing sentence of RI for 7 years and fine of Rs.1,000=00 in default SI for 3 months for commission of offence punishable under Section 304 Part-II read with Section 114 IPC is hereby set-aside. Instead he is acquitted. It will not be necessary for the said appellant to surrender to the jail authorities for undergoing any sentence imposed by the trial Court but he may present himself before the jail authorities for completing certain formalities. Bail bonds executed by the said appellant in Criminal Appeal No.481/2001 shall stand cancelled and surety/sureties is/are discharged.

As far as Criminal Appeal No.482/2001 is concerned, the same partly succeeds. The conviction of the appellant in that Appeal for commission of offence punishable under Section 304 Part-II IPC as well as Section 135 of the Bombay Police Act recorded by the learned 3rd Joint District Judge and Additional Sessions Judge Camp at Anand vide judgment dated March 20, 2001 in Special Case No. (SC/ST) 14/2000 is hereby confirmed. However, the sentence imposed on him by the trial Court is hereby modified. The said appellant is punished to RI for 7

years and 6 months as well as fine of Rs.1,000=00 in default SI for 3 months, for commission of offence punishable under Section 304 Part-II IPC. No separate sentence is imposed on him for commission of offence punishable under Section 135 of the Bombay Police Act. Criminal Appeal No.482/2001 stands partly allowed to the extent indicated hereinabove. Muddamal be disposed of as directed by the trial Court in the impugned judgment.

(J.M.Panchal, J.)

(H.B.Antani, J.)